

**Illinois Department of Revenue
Regulations**

Title 86 Part 521 Section 521.105 Amnesty Program Requirements

**TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 521
AMNESTY REGULATIONS**

Section 521.105 Amnesty Program Requirements
EMERGENCY

- a) Notice. The Department has no duty to notify taxpayers of liabilities that may make them eligible for participation in the Amnesty Program. However, the Department will make reasonable efforts to identify such liabilities and, to the extent practicable, will send written notice to taxpayers. Failure of the Department to notify a taxpayer of the existence or correct amount of a liability eligible for amnesty shall not preclude the taxpayer from participating in the Amnesty Program, nor shall such failure be grounds for abating the 200% sanction imposed under 35 ILCS 735/3-2, 3-3, 3-4, 3-5, 3-6 and 3-7.5 for failure to pay the liability.
- b) Participation In Amnesty Program. The Amnesty Program is voluntary. Taxpayers participate in the Amnesty Program by sending payments to the Department on or after October 1, 2003 and on or before November 17, 2003 ("the Amnesty Program Period"). The tax-appropriate returns and forms, and/or a schedule specifying the tax liabilities and tax periods for which amnesty is sought, must accompany payments. The Department may provide amnesty specific forms for some types of tax liabilities. The Department will consider such payments, returns, forms, and schedules to have been received by the Department if they are postmarked by the United States Postal Service or are physically delivered to the Department during the Amnesty Program Period. Taxpayers may use registered or certified mail at their option.
- c) Taxpayer Agreement. Unless the taxpayer informs the Department otherwise in writing, the Department will deem all taxpayers that make payments during the Amnesty Program Period to be participants in the Amnesty Program. By participating in the Amnesty Program, a taxpayer affirms and agrees to all of the following conditions: 1) the taxpayer relinquishes all rights to contest the tax liability that is being paid; 2) except as provided herein, the taxpayer may not claim a refund of the money paid or protest the Department's denial of such a claim; 3) the taxpayer will promptly correct any underpayment of the tax liability; and 4) the taxpayer cannot withdraw from the Amnesty Program.
- d) Form of Payment. Taxpayers who participate in the Amnesty Program cannot pay under protest under the State Officers and Employees Money Disposition Act, 30 ILCS Act 230 ("the Protest Act"). Payments must be made by cash, check, guaranteed remittance, or ACH debit. With the permission of the Department, taxpayers may offset underpayments with overpayments and may also use finalized refunds pending with the Department as

offsets against underpaid tax periods. Payments by check that are returned, due to insufficient funds in the taxpayer's account will not qualify as payments during the Amnesty Program Period. The Department will not consider requests for partial payments or payment plans.

- e) Eligible Taxpayers -- Civil Cases Pending In State Courts. ITDAA Section 10 provides that amnesty may not be granted to a taxpayer that is *a party to any civil litigation that is pending in any circuit court or appellate court or the Supreme Court of this State*. Because a taxpayer that is a party to such an action is not eligible to participate in the Amnesty Program, that taxpayer will not be subject to the 200% sanction imposed under 35 ILCS 735/3-2, 3-3, 3-4, 3-5, 3-6 and 3-7.5. Nevertheless, a taxpayer that is ineligible for the Amnesty Program under this section may become eligible if the taxpayer ceases to be a "party" to a civil action by dismissing the action during the Amnesty Program Period. The Department will deem an action dismissed on or before the November 17, 2003 deadline if the taxpayer: (1) executes an agreed order stipulating to judgment in favor of the Department, and (2) either pays the disputed liability, or, in a Protest Act case, agrees to a dissolution of the injunction. A taxpayer is barred from participation in the Amnesty Program only with respect to the tax liabilities and tax periods that are the subject of the action. A taxpayer may still participate in the Amnesty Program with respect to other tax liabilities and tax periods. If the taxpayer declines to do so, those liabilities will be subject to the 200% sanction imposed under 35 ILCS 735/3-2, 3-3, 3-4, 3-5, 3-6 and 3-7.5.
- f) Eligible Taxpayers -- Matters Pending In The Department's Office of Administrative Hearings. Matters pending in the Department's Office of Administrative Hearings are not *pending in any circuit court or appellate court or the Supreme Court of this State*. Therefore, a tax liability that is being contested before one of the Department's Administrative Law Judges is eligible for the Amnesty Program. A taxpayer that fails to participate in the Amnesty Program with respect to such a liability will be subject to the 200% sanction imposed under 35 ILCS 735/3-2, 3-3, 3-4, 3-5, 3-6 and 3-7.5. A taxpayer who wishes to participate in the Amnesty Program with respect to tax liabilities and taxable periods at issue in a matter pending in the Office of Administrative Hearings must stipulate to judgment in favor of the Department and pay the disputed liability on or before November 17, 2003.
- g) Eligible Taxpayers -- Criminal Investigation or Case. ITDAA Section 10 provides that amnesty may not be granted to taxpayers that are a party to any criminal investigation for nonpayment, delinquency or fraud in relation to any State tax imposed by any law of the State of Illinois. A taxpayer who is a party to such an investigation or case is ineligible to participate in the Amnesty Program and will not be subject to the 200% sanction imposed under 35 ILCS 735/3-2, 3-3, 3-4, 3-5, 3-6 and 3-7.5 with respect to the matters under investigation or contained in the complaint, information, or indictment.
- h) Eligible Liabilities. Under ITDAA Section 10, the Amnesty Program applies to taxes imposed by reason of or pursuant to authorization by any law of the State of Illinois and collected by the Department (emphasis added). The Motor Fuel Use Tax (35 ILCS 505/1 et seq.) is excluded from the Amnesty Program. To be eligible, a liability must satisfy both criteria set out in the statute – i.e., the liability must be both "a tax" and "collected by the Department." Thus, local taxes collected by the Department are eligible for the Amnesty Program. Liabilities that are the subject of a settlement agreement between the taxpayer and the Department that became binding on the taxpayer before November 17, 2003 are

not eligible for the Amnesty Program. Taxpayers may not seek to retroactively reapply payments previously made to the Department for the purpose of creating or increasing liabilities eligible for the Amnesty Program. Any liability that is not eligible for the Amnesty Program will not be subject to the 200% sanction imposed under 35 ILCS 735/3-2, 3-3, 3-4, 3-5, 3-6 and 3-7.5. The following examples are illustrative:

- 1) Responsible officer penalties pursuant to Section 3-7 of the Uniform Penalty and Interest Act are 100% penalties and therefore are not eligible for amnesty under the ITDAA, which applies only to “taxes.” However, a corporate taxpayer may participate in the Amnesty Program. If the underlying tax liability of the corporation is reduced to zero, the responsible officer liability will no longer exist. Therefore, responsible officers can, in effect, participate in the Amnesty Program by paying liabilities owed by the corporate taxpayer.
 - 2) A taxpayer that has no tax due, but has incurred a penalty for the late payment of an estimated tax due under the Illinois Income Tax Act or a penalty for late payment of a quarter-monthly payment due under the Retailers' Occupation Tax Act may not participate in the Amnesty Program with respect to such penalties.
 - 3) Over-collections of sales tax that are required to be remitted to the Department by reason of Section 2d of the Retailers' Occupation Tax Act, 35 ILCS 120/2d, are tax amounts eligible for the Amnesty Program rather than a penalty.
 - 4) The retailer's discount from tax for the expenses of collecting and remitting is forfeited when the tax is not timely paid. The loss of the discount is a tax liability eligible for the Amnesty Program rather than a penalty
- i) Eligible Periods. Only taxes due for a “taxable period” ending after June 30, 1983 and prior to July 1, 2002 are eligible for amnesty. The term “taxable period” means the period for which a taxpayer is required to report and pay the tax to the Department. The following examples are illustrative:
- 1) The usual taxable period for Retailers' Occupation Tax purposes is the calendar month. Therefore, a taxpayer may participate in the Amnesty Program with respect to a liability based on such receipts received after June 30, 1983. However, a taxpayer cannot participate in the Amnesty Program with respect to a liability based on such receipts received on and after July 1, 2002. An exception to this general rule is the case of a taxpayer authorized to pay and who does pay Retailers' Occupation Tax liability on an annual or quarterly basis. The taxable period for annual taxpayers of Retailers' Occupation Tax is the calendar year during which gross receipts from retail sales were received. Consequently, annual taxpayers of Retailers' Occupation Tax may participate in the Amnesty Program with respect to a liability based on receipts received on and before December 31, 2001, but not with respect to a liability based on receipts received on and after January 1, 2002. Liabilities incurred during the 1983 taxable year are eligible for amnesty. The taxable period for quarterly taxpayers is the quarterly period in which gross receipts from retail sales were received.
 - 2) The taxable period for Illinois Income Tax purposes is the taxable year. Taxpayers whose taxable year is the calendar year may participate in the Amnesty Program

with respect to a liability based on income earned or received on and before December 31, 2001, but not with respect to a liability based on income earned or received on and after January 1, 2002. Taxpayers whose taxable year is a fiscal year may participate in the Amnesty Program for all taxable years ending after June 30, 1983, but not for any taxable year ending on or after July 1, 2002.

- j) **Payment of All Taxes Due.** ITDAA Section 10 provides that *failure to pay all taxes due to the State for a taxable period shall invalidate any amnesty granted under this Act* (emphasis added). In order to participate in the Amnesty Program a taxpayer must pay the entire liability for a tax type and tax period, irrespective of whether that liability is known to the Department or the taxpayer, or whether the Department has assessed it. A taxpayer may participate in the Amnesty Program selectively, provided that the taxpayer completely satisfied its liability for the tax type and tax period for which amnesty is sought. Thus, a taxpayer may participate in the Amnesty Program with respect to: (1) particular types of tax liability, but not others (e.g., Illinois Income Tax, but not Illinois Retailers Occupation Tax), and (2) particular tax periods but not others (e.g., 2000 Illinois Income Tax but not 2001 Illinois Income Tax). However, a taxpayer may not participate in the Amnesty Program on an issue-by issue basis (e.g., pay a 2000 Illinois Income Tax liability but exclude payment for issues related to whether the taxpayer's sale of a division is "non-business income"). A taxpayer that wishes to selectively participate in the Amnesty Program should inform the Department in writing of that fact unless it is clear upon the face of the returns, forms and/or schedules supplied to the Department with the taxpayer's payment. A payment that is intended by the taxpayer to be in satisfaction of more than one tax or more than one tax period and that is insufficient to satisfy all amounts due will be applied to each tax amount in the order in which the tax amount became due, starting with the oldest tax amount due unless specifically directed otherwise by the taxpayer.
- k) **Underpayment and Overpayment of Tax Due.** Taxpayers, including taxpayers under audit during the Amnesty Program Period, who are unsure of the exact amount of a tax liability should make a good faith estimate of the amount of the liability. If the Department later determines that a payment made during the Amnesty Program Period is insufficient to completely satisfy the tax liability for which the payment was made, and the applicable statute of limitations has not yet expired, the Department may send a bill to the taxpayer for the remaining taxes due. Pursuant to 35 ILCS 735/3-2, 3-3, 3-4, 3-5, 3-6 and 3-7.5, the Department will assess 200% of the penalties and interest that would otherwise be applied to the portion of the liability that was not paid. The taxpayer must pay the bill by the due date. A taxpayer who fails to pay the bill by the due date will be liable for 200% of the penalties and interest imposed under 35 ILCS 735/3-2, 3-3, 3-4, 3-5, 3-6 and 3-7.5 as if no payment had been made during the Amnesty Program Period. The Department may in its discretion refund overpayments of tax that were caused by computational error. All other overpayments will be credited to the taxpayer. The following examples are illustrative:
 - 1) In October 2003, a taxpayer pays a \$5,000 Retailers' Occupation Tax liability incurred in May 2001. After November 17, 2003, the taxpayer discovers an additional \$1,000 in Retailers' Occupation Tax liability for May, 2001 that was omitted from its Amnesty Program payment. The taxpayer can avoid double interest and penalties on the entire amount of the tax liability already paid by voluntarily filing an amended return, and paying the additional \$1,000, plus double interest and penalties on the portion of the liability that was not paid during the Amnesty Program Period.

- 2) An audit is being conducted in November, 2003 of the taxpayer's calendar year 2000 income tax return. The taxpayer is considering whether to participate in the Amnesty Program and asks the auditor to complete the audit prior to the November 17, 2003 amnesty deadline. The auditor advises the taxpayer that the audit cannot be completed prior to November 17, 2003. The taxpayer makes a good faith estimate that \$3000 in Income Tax liability will be owed at the end of the audit. The taxpayer pays the \$3,000 with an amended return during the Amnesty Program Period. After November 17, 2003, the auditor determines that an additional \$500 in Income Tax liability attributable to tax year ending 2000, is due. The Department sends a bill to the taxpayer for the additional \$500 in income tax, plus double interest and penalties. The taxpayer can avoid paying double interest and penalties on the entire \$3000 amount of Income Tax liability attributable to tax year ending 2000, by paying the additional \$500 tax, plus double interest and penalties, by the bill's due date.
 - 3) In October 2003, an audit is completed in which the auditor determines that \$10,000 in Retailers' Occupation Tax liability was underreported on the taxpayer's April, 2002 tax return. The taxpayer agrees that \$8,000 is due but asserts that the other \$2,000 is attributable to nontaxable sales. The taxpayer attempts to participate in the Amnesty Program by paying \$8,000 during the Amnesty Program Period and protesting the remainder. The taxpayer has not satisfied the conditions of the Amnesty Program and the taxpayer will be liable for double interest and penalties on the entire Retailers' Occupation Tax liability attributable to April 2002 unless the taxpayer prevails in administrative hearings or court.
 - 4) In May 2001, a taxpayer was issued an assessment in the amount of \$10,000 plus penalty and interest for Retailers' Occupation Tax incurred in January 2001. The taxpayer conceded only one-half of the liability but has never requested an administrative hearing on the disputed portion and the assessment has, therefore, become final. The taxpayer requests amnesty on the \$5,000 agreed portion of the assessment and attempts to participate in the Amnesty Program by making a \$5,000 payment on November 17, 2003. Because the \$10,000 was not paid in full, the taxpayer will be subject to double penalties and interest on the entire Retailers' Occupation tax liability attributable to January 2001.
 - 5) Company A operates a retail mail order and internet business that makes sales to Illinois residents. Company A does not collect or remit Illinois Use Tax on such sales. Company A is an affiliate of Company B, which operates a number of "brick and mortar" retail stores in Illinois. Company A and Company B share the same parent corporation, have a joint business and advertising plan, and market goods to customers under the same brand name. Company A's failure to participate in the Amnesty Program would subject it to the 200% sanction on uncollected Illinois Use Tax if a court were to determine that Company A has "nexus" with Illinois.
- l) A taxpayer who is under federal audit may participate in the Amnesty Program by following the procedure set out in subsection (k) above and making a good faith estimate of the increased liability that may be owed to the Department. For purposes of participating in the Amnesty Program only, a taxpayer may file an amended return reporting a federal change prior to receiving final notification from the Internal Revenue Service that the change has

occurred. Although participants in the Amnesty Program may not seek or claim refunds, a limited exception to this rule will be permitted for taxpayers whose refund claims are based upon final determinations of the Internal Revenue Service or the federal courts.

- m) Statutes of Limitation and Other Filing Periods. Participation in the Amnesty Program does not toll any applicable statute of limitations or other time period for the filing of protests with the Department, or actions in circuit court under the Protest Monies Act (30 ILCS 230/1). A statute of limitations or other time period that expires during the Amnesty Program Period cannot be revived, even if the taxpayer has failed to satisfy all the requirements of the Amnesty Program. The Department's procedures for obtaining waivers of statutes of limitations for taxpayers under audit shall continue to apply.
- n) Reasonable Cause. Nothing in the ITDAA or this section is intended to change the meaning of "reasonable cause" as that term is used in the Uniform Penalty and Interest Act, 35 ILCS 735/3-8. Taxpayers needing clarification of "reasonable cause" should consult Section 700.400 of these Regulations.